

BOARD OF APPEALS CASE NO. 5468	*	BEFORE THE
APPLICANTS: Gerald & Hope Shelton	*	ZONING HEARING EXAMINER
REQUEST: Special Exception and variance to	*	OF HARFORD COUNTY
operate a motor vehicle repair shop and store	*	
commercial vehicles without the required	*	
setbacks on less than 2 acres	*	Hearing Advertised
	*	Aegis: 1/19/05 & 1/26/05
HEARING DATE: March 7, 2005	*	Record: 1/21/05 & 1/28/05
	*	

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicants, Gerald and Hope Shelton are requesting a Special Exception pursuant to Section 267-53D(1) of the Harford County Code to allow storage of commercial vehicles and Section 267-53D(3) of the Harford County Code to allow motor vehicle repair and Variances pursuant to Section 267-53D(1)(c) to allow commercial vehicle storage on a parcel less than two acres; Section 267-53D(3)(a) to allow a motor vehicle repair shop with less than one acre and less than the required 10-foot buffer yard to adjacent residential lot; and Section 267-34C, Table II, to allow motor vehicle use to encroach into the minimum 40 foot side yard setback in an Agricultural District.

The subject parcel is located at 3402 Carvale Drive, Aberdeen, Maryland 21001, in the Third Election District, and is more particularly identified on Tax Map 51, Grid Number 4A, Parcel 934, Lot 14. The parcel contains approximately 0.758 acres.

The Applicant, Gerald Shelton appeared and testified that he and the Co-Applicant Hope Shelton are the owners of the subject property. Mr. Shelton stated that he resides on the property part time. According to the witness, the improvements located on the parcel consist of a house, a 30 foot by 40 foot garage located to the rear of the property, a driveway, and an in-ground pool.

The witness testified that he had read the Department of Planning and Zoning Staff Report, and had only one correction to the information contained therein. He disputes the Department of Planning and Zoning's contention that the property contains less than the required 10 foot buffer yard to an adjacent residential lot. In support of this objection, he noted that the site plan (Staff Report Attachment 4) indicates that there is a 15 foot buffer yard between the existing motor vehicle repair shop and the adjacent residential lot. The witness testified that the site plan in question was drawn by his father, and that he obtained it from Harford County.

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Mr. Shelton indicated that he was requesting the subject special exceptions and variances so that he could use the subject property to repair company vehicles utilized by his business, Victory Cab Company. He further stated that he is not requesting to store any parts or materials outside, or to work on vehicles outside of the existing garage. He testified that there is one untagged vehicle present on the property, namely a Plymouth Duster, which is parked in the driveway and belongs to his son. Any other vehicles on the property which are not stored inside the garage can be removed with the exception of a cargo trailer and Chevy Tahoe which the Applicant uses for recreational purposes. The Applicant further testified that he has automobile dealer tags which are placed on untagged vehicles when they need to be moved off the property. He also stated that once a vehicle is repaired, it is stored on the property overnight, at most, before being moved offsite.

In response to questioning by the Hearing Examiner, the witness testified that there is nothing unique about his property except that there are only a couple other lots in the neighborhood with garages. He further indicated that the requested special exceptions and variances would have no adverse impact on adjoining properties, because all motor vehicle repair work is done inside the garage, and none of the repairs are done after normal business hours. In addition, he noted there are several other properties in Harford County, within a ten mile radius, which are utilized for the same purpose.

In response to cross examination by People's Counsel, the Applicant stated that he did not prepare the site plan which was attached to his application, and that he had obtained it from the Harford County Health Department. He further acknowledged that he did not know who had actually drawn the plan. Mr. Shelton indicated that the area designated on that plan as a proposed driveway has now been completed. It is constructed of reground rolled blacktop. Other paved surfaces on the property consist of a paved area on the right side of the garage, between the garage wall and the area designated as a drain field. That paved area is approximately 8 to 10 feet wide. There is another driveway in front of the existing dwelling unit, which is paved with the same surface material.

The Applicant admitted that he also repairs and/or stores vehicles connected with his septic business on the subject property, and testified that the septic business owns a backhoe, a loader, a bobcat, a dump truck, and a flat-bed truck. He stated that he has stored the loader on the subject property on occasion when he thought he might need it to remove snow. The dump truck has been stored on the property after being used to deliver paving material to the site.

Mr. Shelton indicated that he is a mechanic, and that he personally performs all vehicle repairs done on the property. He does have a septic crew, but they do not do any work in connection with the motor vehicle repair operation, other than clean up the subject site. He stated that he had one employee who formerly worked part time as a mechanic at the business. The Applicant indicated that he is personally present on site every day for approximately eight hours repairing vehicles. He has no office at the site, but does have dispatching offices in Aberdeen and Edgewood, where he spends very little time.

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In addition to the taxicab company and septic businesses, the Applicant testified that he also owns a car dealership. He stated that vehicles from the car dealership are occasionally repaired on the subject property, if they are going to be converted into taxi cabs. The work involved in converting vehicles to taxi cabs consists of installing radios and top lights, adding lettering, and conducting Maryland State vehicle inspections.

In response to questions involving work performed on the property, the Mr. Shelton indicated that he does use motorized tools, such an air compressor, lift, and other air tools in connection with his repair work. He stated that up to four vehicles at a time will fit inside the garage, but he typically only works on two vehicles at a time. He further indicated that the total number of vehicles usually found on the premises at any given time ranges between six to eight, and that as of the date of the hearing, there are seven vehicles located on the site. Mr. Shelton identified these vehicles as a pick-up truck, his son's Plymouth Duster, an additional pick-up truck, and a flat-bed roll back truck. His uncle resides at the property, and he also stores his private vehicle in the front driveway. In response to additional questions on cross examination, the Applicant indicated that he brings vehicle into or out of the site as needed, and that the only repairs performed on site are for his own vehicles. He further indicated that he, and his various companies, own approximately forty vehicles, all of which are repaired on the subject property.

Mr. Shelton acknowledged that his property is less than one acre in size, and that all properties in the neighborhood are residential. When questioned about the Staff Report's claim that vehicle parts and tires are stored on the property, the witness responded that all of the parts, and all tires except those stored on the tire rack have been removed from the property. He further indicated that all vehicles worked on at the property will be stored either inside the existing garage, or right outside of it. He stated that the property immediately adjacent to the garage has a lot of trees and questioned whether the adjoining property owners can see the garage from their parcel.

According to Mr. Shelton, all motor vehicle repair at the subject site takes place between the hours of 8:30 a.m. and 4:00 to 5:00 p.m. He stated that he usually does not bring any vehicles in after those hours, and that no vehicles have ever been towed in before or after those hours. He also stated that very little work is done after normal business hours, other than his son working on his own personal vehicle. He acknowledged that the lifts, compressor, and air tools make noise, and that the compressor is the loudest tool used in connection with his repair business. However, he indicated that the doors to the shop are closed 95% of the time when the compressor is running. The witness further testified that the only gasoline stored on the property is utilized for operation of his personal four-wheel recreational vehicles. He did indicate, however, that there is a 55 gallon drum of motor oil stored on the property, which is pumped out monthly by an oil removal company.

Mr. Shelton also acknowledged that the property is not his primary residence. He did, however, testify that he is in the process of remodeling, and that once the remodeling is complete he intends to move to the property and utilize it as his primary home. He also stated that he has never heard one complaint by any neighbor regarding operations conducted on the site, but indicated that he keeps to himself and does not really talk to the neighbors.

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Mr. Dennis Sigler appeared and testified on behalf of the Department of Planning and Zoning regarding the findings of fact, and recommendations made by that agency. The Department recommended denial of the Application in its February 7, 2005 Staff Report. According to Mr. Sigler, in most cases the Applicant could not meet the special exception requirements, and the property cannot meet the area requirements for either requested special exception use because the site is only 3/4 of an acre in size. Mr. Sigler further indicated that the Carsin Vale subdivision where the subject property is located is a residential neighborhood containing small lots which barely met the setback requirements of the 1952 Harford County Zoning Code upon creation. The witness indicated that the Department had conducted an on-site inspection of the subject property and found two vehicles parked in the subject garage and two more vehicles parked directly outside of the garage -- all of which were being worked on on the date of the visit.

In response to questioning by the Hearing Examiner, Mr. Sigler responded that the subject property is not unique in any way. He indicated that the lot is rectangular, level, gently sloping, and that it contains nothing unique from a topographical standpoint. He also stated that the subject property is essentially the same as all other lots in the neighborhood. Mr. Sigler indicated that the Department is concerned about potential well water contamination in the area of the subject property. In addition, he indicated that Carvale Drive is a very minor street, which is not designed to carry the traffic load from the number of vehicles being serviced at the Applicant's property. Mr. Sigler further stated that the Department had concerns regarding noise generated by the operation of the Applicant's business because the garage is located only 15 feet from the property line. Although Harford County Code Section 267-53D(3)(a) requires only a ten foot buffer yard, Mr. Sigler stated that the setbacks for the subject garage are 40 feet, and the garage itself does not meet the 40 foot setback requirement.

In response to cross-examination by the Applicant, Mr. Sigler reiterated that there were vehicles being worked on outside the garage on the date of the Department's site inspection,. The hoods on those vehicles were up when he arrived at the site, and closed when he left. In response to cross examination by People's Counsel, Mr. Sigler confirmed that Harford County Code Section 267-39C(7)(b) requires all portions of the lot used for motor vehicle repair to be paved. He, did however, indicate that he could not tell whether these areas were actually paved because the ground was covered with snow on the date of his site visit. He further stated that if the subject request is approved, the Applicant's site plan will need to be submitted to the Development Advisory Committee for review.

Numerous protestants appeared in opposition to the subject Application. Mr. Jim Ator resides at 3404 Carvale Drive, directly adjacent to the subject property. He identified a hand drawn diagram (Protestant's Exhibit 1) as an accurate depiction of the neighborhood, and of the properties and residences therein. Mr. Ator testified that his property is slightly less than one acre in size, and is approximately the same dimensions as the Shelton property. According to Mr. Ator, the neighborhood is a small, quiet, middle income neighborhood containing about fifteen homes, and no businesses. He identified several photographs (Protestant's Exhibits 2 - 9) which he took approximately one month prior to the hearing date. All of the identified photographs were taken either on, or around the Ator property, and depict the Shelton property, or Carvale Drive immediately in front of the Shelton property.

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Protestant's Exhibit 2 is taken from the rear yard of Mr. Ator's property, and shows the subject property's rear yard. The garage door on the property is open in that photograph. Protestant's Exhibit 3 was taken from Ronson Court looking toward the Shelton property, and shows a septic tank truck parked in front of the Shelton home. Protestant's Exhibit 4 was taken from Carvale Drive in front of the Shelton property, and shows both garage doors open with numerous vehicles and commercial equipment parked in front of the garage. Protestant's Exhibit 5 is a photograph taken from Mr. Ator's rear yard looking towards the Shelton property, depicting vehicles parked in woods at the rear of the subject parcel. Protestant's Exhibit 6, which was taken from the front of Mr. Ator's home, shows a septic tank truck parked on Carvale Drive. Protestant's Exhibit 7 was also taken from Carvale Drive, and shows a dump truck, car, and septic tank truck parked in various driveways on the Shelton property. Protestant's Exhibit 8, taken from Carvale Drive, depicts numerous vehicles and a large trailer parked behind and adjacent to the large garage on the subject property. Protestant's Exhibit 9, taken from Carvale Drive, shows a septic tank truck, commercial equipment and numerous vehicles parked in the driveway leading to the subject garage.

Mr. Ator testified that he is familiar with the subject request, and was testifying in opposition because of noise generated by the client's motor vehicle repair facility. According to the witness, vehicles are constantly being hauled or driven in and out of the property, and the air guns used in connection with the business are extremely noisy. The witness also testified that he is concerned about potential detriment to property values due to the aesthetics of the Shelton property. He is also concerned about possible contamination of the well on his adjacent property, which he indicated is only 40 feet deep. In addition, the witness objects to the odors emanating from the septic tank trucks, which are frequently parked adjacent to his home. The Applicant did not cross examine this witness.

Mr. Patrick Ely, who resides at 3406 Carvale Drive, appeared and testified in opposition to the subject Application. Mr. Ely lives next door to Mr. Ator, two doors away from the Shelton property. He has resided at that location for eight years. The witness testified that his property is approximately the same size and shape as the subject property, and that all of the properties in the neighborhood are substantially the same. He agrees with Mr. Ator's description of the neighborhood as residential.

Mr. Ely indicated his main concern is fear of contamination to nearby wells, including his own, which is only 80 feet deep. He also testified that there are frequently vehicles parked on the shoulder of the road in front of the Shelton property, which could hinder emergency vehicles in navigating the roadway. He stated that snow plows frequently have difficulty clearing the road due to the excessive number of vehicles parked in front of the Shelton property. Mr. Ely also expressed objections to the noise emanating from the property, and the excessive amount of traffic entering and exiting the site. He indicated that he has, on numerous occasions, been delayed in his travels while waiting for tow trucks to back in and out of the Shelton driveway. He is also concerned that the negative aesthetics caused by the requested use may have a detrimental impact on property values. Mr. Ely was not cross examined by the Applicant.

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The next protestant to testify was Mr. Mark Kregel. Mr. Kregel resides at 1403 Ronson Court, which intersects Carvale Drive on the opposite side of the street from the subject property. His home is the second house on the left side of Ronson Drive. The witness indicated that he can clearly see Mr. Shelton's property from his home. He has resided at that location for approximately 38 years, and agrees with previous witnesses' characterization of the neighborhood as residential.

Mr. Kregel expressed concern that if the request is approved, there will be continued problems with odors, noise and dangerous living conditions in the neighborhood. The witness indicated that Mr. Shelton frequently parks numerous vehicles directly in front of the subject property. On one occasion, he parked a low boy trailer in front of the house, which was almost hit by his wife when she left for work one morning before dawn, due to the poor visibility caused by the trailer being so low to the ground. The witness also expressed concerns regarding potential detriment to property values, and potential safety issues for neighborhood children resulting from excessive vehicular traffic.

Mr. Kregel testified that he has motor vehicle repair experience, having grown up and worked around a garage. Based on his experience, some minor repairs such as changing batteries or replacing tires are frequently done outside. He indicated that if the garage itself is full, but additional vehicles need minor work, practical aspects of the motor vehicle repair business would dictate that much of the minor work be done outside. The witness also testified that there is a constant stream of vehicles being moved in and out of the subject property. There was no cross examination of this witness by the Applicant.

The final witness to testify on behalf of the Protestants was Kathy Moyer, who resides at 3400 Carvale Drive, directly adjacent to the subject property. Ms. Moyer identified a series of photographs taken by her on March 2, 2005. These photographs were introduced as Protestant's Exhibits 10 - 16. Protestant's Exhibit 10 was taken from her rear yard looking into the woods behind the Applicant's property, and shows vehicles parked in the woods. Protestant's Exhibit 11 was taken from the witness's rear yard behind the Shelton's garage, and shows numerous untagged vehicles parked at that location. Protestant's Exhibit 11 was taken from Ms. Moyer's rear yard looking toward the Shelton's property, and shows numerous untagged vehicles parked behind the garage, and a cargo trailer parked on the other side of the garage. Protestant's Exhibit 13 was taken from Ms. Moyer's property, facing the front of the subject garage, and shows a rack filled with tires adjacent to that garage. Protestant's Exhibit 14 was taken from Carvale Drive in front of Ms. Moyer's property, and depicts numerous vehicles, including a septic tank truck, parked in the driveway in front of an open garage door. Protestant's Exhibit 15 was taken from the street in front of the Moyer property and shows vehicles parked in front of the Shelton residence and additional vehicles parked in the rear yard behind the residence. Protestant's Exhibit 16 was taken from Carvale Drive facing the Shelton property, and shows an additional four vehicles parked in the front driveway of the subject property.

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According to the witness, her property is approximately 3/4 of an acre in size, which is roughly equivalent to the Shelton property. Ms. Moyer expressed concerns regarding the excessive noise emanating from The Applicant's property. She testified that there is a large amount of traffic entering and exiting the property, and a lot of people coming onto and off of the property on a regular basis. She also expressed concerns regarding the negative aesthetic appearance of the vehicles parked on the Shelton property. The witness had additional safety concerns regarding stagnant water sitting in tires during the summer months, and people from the Applicant's cab company next door coming onto her property after dark. She further testified that a considerable amount of activity takes place on the property after 5:00 p.m. especially in the summer.

Ms. Moyer stated that she does not ever remember seeing Mr. Shelton at the subject property, although she has spoken with his wife on several occasions to request that she move a vehicle. She further indicated that she can clearly observe most of the activity taking place in the garage area of the Shelton property from her home. Although there are a couple of trees and bushes located on her side of the property line, she stated that Mr. Shelton has only one tree on his property in the buffer area between the garage and her parcel. The Applicant had no questions on cross examination for this witness.

Five other neighborhood residents appeared at the hearing in opposition to the subject application, but did not offer what they claimed would have been cumulative testimony in connection with the case.

No rebuttal testimony was presented by the Applicant.

CONCLUSION:

The Applicants, Gerald Shelton and Hope Shelton are requesting a Special Exception pursuant to Section 267-53D(1) of the Harford County Code to allow storage of commercial vehicles and Section 267-53D(3) of the Harford County Code to allow motor vehicle repair and Variances pursuant to Section 267-53D(1)(c) to allow commercial vehicle storage on a parcel less than two acres; Section 267-53D(3)(a) to allow a motor vehicle repair shop with less than one acre and less than the required 10-foot buffer yard to adjacent residential lot; and Section 267-34C, Table II to allow motor vehicle use to encroach into the minimum 40 foot side yard setback in an Agricultural District.

The relevant Provisions of the Harford County Code with regard to special exception uses are set forth below.

Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

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Section 267-52 provides:

“General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9I, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

Section 267-53D(1) provides:

“Motor Vehicle and related services:

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:
 - (a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.
 - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
 - (c) A minimum parcel area of two (2) acres shall be provided.

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Section 267-53D(3) of the Harford County Code provides:

“Motor Vehicle repair shops. These uses may be granted in the AG and B1 Districts, provided that:

- (a) A buffer yard at least 10 feet wide shall be provided along any adjacent road right of way or adjacent residential lot.
- (b) The requirements of Section 267-39C(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met.
- (c) Unless Board approval is granted, accessory buildings and outdoor storage of vehicles, tires and equipment shall be prohibited.
- (d) The operator of the shop shall maintain a log of all vehicles repaired. For each vehicle, the log shall include the vehicle identification number and a description of the vehicle and identify the dates the vehicle arrived and was removed. The log shall be available for inspection during normal business hours. If no log exists, it shall be assumed for the purposes of 267-39C(7)(f) that each vehicle has been stored on the property for 90 days.
- (e) The rental or storage of trailers, boats and trucks shall be prohibited.
- (f) Proposed outdoor storage areas and refuse storage areas shall be fenced or screened from adjacent properties and shown on the site plan submitted for Board approval.
- (g) Materials, textures, colors and designs of fences, walls and screening shall be compatible with the on-site development, adjacent properties, and the neighborhood. When a wall is required, a planting strip at least 5-feet wide shall be provided also and shall include trees and shrubs that are at least 2-feet high when planted and that may be expected to form a year-round dense screen within 3-years. The location and species of trees and shrubs used for screening shall be chosen with consideration for the size of the trees and shrubs at maturity. Fences, walls, screening and planting strips shall be located so that they do not constitute sight obstructions for the drivers of vehicles entering or exiting the parcel or any adjacent lot or parcel.
- (h) The fumes, odors and noise from the vehicle-related work shall be minimized.
- (i) A minimum parcel area of 1-acre shall be required.
- (j) In the AG District, the use shall be operated by the resident of the property.

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Section 267-34(C), Table II, of the Harford County Code requires a minimum lot size of two acres and a minimum side yard width of 40 feet for motor vehicle uses in the AG District.

Section 267-9I provides as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.”

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The Court of Appeals established the standard for determining whether to grant a requested special exception use in the case of *Schultz v. Pritts*, stating:

"...[T]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden." (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The Schultz court further held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." 291 Md. At 15, 432 A.2d at 1327; citing, *Anderson v. Sawyer*, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and *Deen v. Baltimore Gas & Electric Co.*, 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The Hearing Examiner finds that the Applicants have not met their burden of proving that the requested special exception use meets the standards and requirements prescribed by Section 267-53D(1)(c) of the Harford County Code, because among other things, the subject property is less than two acres in size. The Hearing Examiner also finds that the Applicants failed to meet their burden of proving that the requested use meets the requirements set forth in Section 267-53D(3)(I), because in addition to other issues, the subject parcel is less than one acre in size. Therefore, the requested special exceptions cannot be granted unless, at minimum, the Applicant first obtains a variance from the aforesaid minimum lot size requirements.

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Section 267-11 of the Harford County Code, permits the granting of variances stating:

- A. [V]ariances from the provisions or requirements of this Part 1 may be granted if the Board finds that:
- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of *Cromwell v. Ward*, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. *Cromwell, supra*, at 721. If the subject property is found to be unique, the trier of fact may proceed to the second step, and determine whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the Applicant.

The Hearing Examiner finds that the Applicants failed to meet their burden of proving that the subject property is unique. When asked by the Hearing Examiner if there was anything unique about his property, the Applicant, Gerald Shelton, indicated that, as far as he could see, there was not. In fact, he specifically stated that the only thing unique about his property was that only a couple of other lots in the neighborhood had garages.

As held by the Court of Special Appeals in *North v. St. Mary's County*, 99 Md. App. 502, 638 A.2d 1175 (1994),

"The 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions." In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls." *North, supra* at 99 Md. App, 514.

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Mr. Sigler, testifying on behalf of the Department of Planning and Zoning indicated that the subject property is rectangularly shaped, level to gently sloping, and contains nothing unique from a topographical standpoint. He further testified that the lot is basically the same as all other lots in the neighborhood. In addition, each of the neighboring property owners testifying in opposition to the Application, indicated that their properties' were approximately the same size and configuration as the subject property.

Because there is nothing unique or unusual about the subject property which would cause the zoning ordinance to impact disproportionately upon that property, the two step sequential analysis set forth in Cromwell v. Ward cannot be completed, and the variance must be denied. "Where conditions or standards are required to be conformed to in order to meet approval of a special exception, the inability to secure a variance to the standards or conditions requires that the special exception be denied." *Umerly v. People's Counsel for Baltimore County*, 108 Md. App. 497, 672 A2d. 173, (1996)

For the reasons set forth above, the Hearing Examiner recommends that the subject Application be denied.

Date: APRIL 12, 2005

REBECCA A. BRYANT
Zoning Hearing Examiner